And indeed the criminal law would seem to be chiefly concerned with wrongs injurious to the public at large. See 1 BISHOP, NEW CRIMINAL LAW, § 32. *Cf.* BOSANQUET, PHILOSOPHICAL THEORY OF THE STATE, 37, 39. When a public officer refuses to perform his function, the citizen has no adequate remedy but *mandamus*. This consideration, however, leads to a modification of the citizen's right in that he must show that the officer does not intend to perform his duty before he may enforce performance by *mandamus*. *In re Whitney*, 3 N. Y. Supp. 838.

MUNICIPAL CORPORATIONS — LIABILITY FOR TORTS — INJURY FROM FALLING LIMB OF DEAD TREE ON STREET. — The plaintiff was injured by a limb falling from a tree standing on a public street. The tree had been in a dangerous condition over a year. *Held*, that the municipal corporation is not liable. *Dyer* v. *City of Danbury*, 81 Atl. 958 (Conn.). See NOTES, p. 646.

MUNICIPAL CORPORATIONS — LIABILITY FOR TORTS — ULTRA VIRES UNDERTAKING. — The plaintiff was injured by a blast from a quarry, operated by the municipal authorities. The city had no power to operate the quarry. *Held*, that the plaintiff cannot recover. *City of Radford* v. *Clark*, 73 S. E. 571 (Va.). See NOTES, p. 648.

PATENTS — EFFECT OF DECREE FOR DEFENDANT IN INFRINGEMENT SUIT. — A patent for certain wheels was declared invalid in a suit in the Seventh Circuit against the Kokomo Company. The patent was held valid in the Second Circuit, and this holding was affirmed by the Supreme Court. Purchasers of wheels from the Kokomo Company are sued for infringement in the second Circuit. *Held*, that they are not protected by the decree in favor of the seller. *Hurd* v. *Seim*, 189 Fed. 591 (Circ. Ct., N. D. N. Y.); *Hurd* v. *Woodward Co.*, 190 Fed. 28 (Circ. Ct., N. D. N. Y.). See NOTES, p. 649.

PATENTS — INFRINGEMENT — LICENSE RESTRICTION THAT USER BUY UNPATENTED SUPPLIES ONLY FROM PATENTEE. — Patented mimeographs were sold with license restrictions that they be used only with supplies of the patentee's production. The defendant sold unpatented ink with the expectation that it would be used on the patented mimeograph. *Held*, that the defendant is guilty of contributory infringement. *Henry* v. *A. B. Dick Co.*, U. S. Sup. Ct., March 11, 1912. See NOTES, p. 641.

QUASI-CONTRACTS — MONEY PAID UNDER DURESS OR COMPULSION OF LAW — RECOVERY OF TAXES COLLECTED UNDER UNCONSTITUTIONAL STATUTE. — A state statute levied an unconstitutional tax upon foreign corporations and provided for heavy monetary penalties and forfeiture of the right to do business upon failure to pay. *Held*, that a corporation paying the tax under protest may recover it. *Atchison, etc. Ry. Co.* v. *O'Connor*, 32 Sup. Ct. 216.

A state statute levied a franchise tax upon foreign corporations authorized to do business in the state and provided for a heavy penalty and forfeiture of the right to do business upon non-payment. The supreme court of the state had held that a previous similar statute applied only to corporations doing intrastate business. *Held*, that a foreign corporation doing interstate business cannot recover the tax paid under protest. *Gaar, Scott & Co.* v. *Shannon*, 32 Sup. Ct. 236.

Institution of suit on an illegal claim is not duress, since the invalidity of the claim may be shown as a defense. See *Town Council* v. *Burnett*, 34 Ala. 400, 404; *Oceanic Steam Navigation Co.* v. *Tappan*, 16 Blatch. (U. S.) 296, 301. But see KEENER, QUASI-CONTRACTS, 434. Nor is a demand for property under a void warrant duress, unless the warrant is *primâ facie* valid, for such a

warrant may be resisted. *Cf. Sowles* v. *Soule*, 59 Vt. 131, 7 Atl. 715; *Canfield Salt & Lumber Co.* v. *Township of Manistee*, 100 Mich. 466, 59 N. W. 164. See 2 COOLEY, TAXATION, 3 ed., 1476. And since mere sale of realty under an illegal tax claim is void and does not cloud the title, it is not duress. *City of Detroit* v. *Martin*, 34 Mich. 170; *Sonoma County Tax Case*, 13 Fed. 789. But *cf. Montgomery* v. *Cowlitz County*, 14 Wash. 230, 44 Pac. 259. It has been held, in accord with the principal cases, that a statute imposing penalties for non-payment is duress. *Ratterman* v. *Express Co.*, 49 Oh. St. 608, 32 N. E. 754. Though its validity could be attacked in the action for collection, if it proved valid, the penalties for non-payment would be imposed. This risk makes payment under protest involuntary. *Contra, Michel Brewing Co.* v. *State*, 19 S. D. 302, 103 N. W. 40. The first of the principal cases further holds that a statute automatically forfeiting the franchise constitutes duress. A decision may subsequently declare the statute void *ab initio*, but its effect upon the business in the meantime cannot be erased. The same considerations apply when it is uncertain whether the plaintiff's business is within the statute. But when the terms of the statute are reasonably free from doubt, or have been made so by judicial construction, and no step except demand is taken against the business, there is no duress.

RES JUDICATA — MATTERS CONCLUDED — FORMER JUDGMENT BAR TO A NEGATIVE DEFENSE. — In answer to a plea of no consideration in an action for rent, the plaintiff pleaded a recovery on a former instalment. In the former action, there had been no allegation or denial of consideration. *Held*, that the defendant is estopped by the former judgment. *Cooke* v. *Rickman*, 105 L. T. 896 (Eng., K. B. D., July 13, 1911).

In a subsequent action between the same parties or their privies, a prior judgment is conclusive evidence as to all questions actually adjudicated thereby. *Price* v. *Carlton*, 121 Ga. 12, 48 S. E. 721; *Anthanissen* v. *Dart*, 94 Ga. 543, 20 S. E. 124. This is true even though the later action is on a different cause of action, as for a subsequent instalment. *Koehler* v. *Holt Mfg. Co.*, 146 Cal. 335, 80 Pac. 73. See *Bond* v. *Markstrum*, 102 Mich. 11, 19, 60 N. W. 282, 284. The rule is clearly fictitious, since, while declaring the prior judgment conclusive evidence, it confines its operation in this respect to actions between the parties. See 17 HARV. L. REV. 406. The policy underlying it is the desirability of limiting litigation. See 2 BLACK, JUDGMENTS, 2 ed., § 500. It is justified on the ground that the parties have admitted the fact or have had adequate opportunity to contest it. See 2 BLACK, JUDGMENTS, 2 ed., § 614. Consequently, it does not apply where the defendant sets up an affirmative defense not considered in the former action. *Richardson* v. *City of Eureka*, 110 Cal. 441, 42 Pac. 965; *Stone* v. *St. Louis Stamping Co.*, 155 Mass. 267, 29 N. E. 623. But where the fact, even though not in terms pleaded or denied in the prior suit, was essential to the judgment in that suit, it seems properly held *res judicata*. This is especially true if, as suggested in the principal case, the Judicature Act requires no allegation of such essential fact.

RULE AGAINST PERPETUITIES — TRUSTS FOR ACCUMULATION DURING MINORITY OF TENANTS IN TAIL. — A testator devised an estate to legal limitations in strict settlement, and provided that during the infancy of any tenant for life or in tail in possession the trustees of the will should enter into possession of the rents and profits, with power, *inter alia*, to hold manorial courts and accept surrenders of leases, maintain the infant and apply the surplus to discharge incumbrances on this and other estates. *Held*, that as the trustees take no legal estate, but simply a power, the minority clause is not void for remoteness. *In re Earl of Stamford and Warrington*, [1912] 1 Ch. 343. See NOTES, p. 656.